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Protecting the Greater Good: A Critique of the Public Duty Doctrine as Applied in Murray v. County of Person

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INTRODUCTION

Governments provide many services, such as fire departments and police departments, and have numerous regulatory schemes in order to protect the public from various risks. In North Carolina, the General Assembly has adopted regulatory schemes to help ensure the safety of rides at amusement parks,[1] of septic tanks,[2] of workplaces,[3] and of various other aspects of daily life.[4]

The State frequently relies on the public duty doctrine when individuals attempt to hold the State liable for failing to fulfill its regulatory duties.[5] The public duty doctrine shields a government

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1. N.C. GEN. STAT. §§ 95-111.1 to 95-111.18 (2007 & Supp. 2008) (protecting the public from unsafe amusement park rides and preventing injuries is in the best interest of the people of North Carolina).

2. N.C. GEN. STAT. §§ 130A-333 to 130A-343 (2007 & Supp. 2008) (establishing regulations for wastewater treatment systems to protect the public health).

3. N.C. GEN. STAT. §§ 95-126 to 95-155 (2007 & Supp. 2008) (adopting a regulatory scheme to ensure safe workplaces). The General Assembly created the Division of Standards and Inspections of the Department of Labor in 1931. Act of Apr. 22, 1931, ch. 312, § 12, 1931 N.C. Pub. Laws 383, 387–89 (codified as amended at N.C. GEN. STAT. § 95-11 (2007)). This division was charged with ensuring that all laws, rules, and regulations for the safety of labor were carried out. N.C. GEN. STAT. § 95-11 (2007). The Division of Standards and Inspections was probably ineffective at ensuring the safety of labor since the North Carolina General Assembly enacted the Occupational Safety and Health Act of North Carolina in 1973 for the purpose of promoting safety in the workplace. Occupational Safety and Health Act of North Carolina, ch. 295, § 1, 1973 N.C. Sess. Laws 305, 305–06 (codified as amended at N.C. GEN. STAT. § 95-126).

4. *See, e.g.*, Animal Welfare Act, N.C. GEN. STAT. §§ 19A-20 to 19A-41 (2007 & Supp. 2008); Motor Vehicle Act of 1937, N.C. GEN. STAT. §§ 20-39 to 20-183 (2007 & Supp. 2008); N.C. GEN. STAT. § 25C-14 (2007) (providing disclosure requirements for the sale of prints of artwork); North Carolina Drinking Water Act, N.C. GEN. STAT. §§ 130A-311 to 130A-329 (2007 & Supp. 2008).

5. *See, e.g.*, Wood v. Guilford County, 355 N.C. 161, 163, 558 S.E.2d 490, 493 (2002) (claiming that Guilford County negligently provided security in its courthouses); Hunt *ex rel.* Hasty v. N.C. Dep't of Labor, 348 N.C. 192, 194–95, 499 S.E.2d 747, 748 (1998) (contending that the State is liable for injuries because it had a duty under the Amusement Device Safety Act to inspect go-kart seatbelts); Stone v. N.C. Dep't of Labor, 347 N.C. 473, 483, 495 S.E.2d 711, 717 (1998) (alleging the N.C. Department of Labor was negligent for failing to inspect a factory pursuant to N.C. GEN. STAT. § 95-4); Watts v. N.C. Dep't of Env't & Natural Res., 182 N.C. App. 178, 180–82, 641 S.E.2d 811, 815–16 (2007) (claiming the North Carolina Department of Environment and Natural Resources ("NCDENR") was negligent in performing a soil test required by N.C. GEN. STAT. § 130A-336), *aff'd in*

entity from liability to an individual when the government entity acts for the benefit of the public by performing a public duty.[6] Critics of the doctrine's application in North Carolina frequently build their arguments around specific examples of the government failing to prevent an injury despite an existing regulatory scheme.[7]

Although the examples the critics cite are tragic and doubtlessly cause incredible amounts of suffering for the victims, it is misleading to use these individual instances to evaluate the public duty doctrine. The public duty doctrine exists to promote the welfare of the public, not the welfare of a specific individual. By focusing on the individual failings of the doctrine, critics ignore the broader benefits provided by it. Because the doctrine only applies to duties that protect the public at large, critics should consider the broader public implications of the doctrine rather than its effects on individuals. Regulatory systems can be criticized for increasing tax burdens or enlarging government.[8] But when analyzed at a public level, regulatory systems in North Carolina have minimized risks to which the public is exposed.[9]

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part as modified per curiam by 362 N.C. 497, 666 S.E.2d 752 (2008). The public duty doctrine remains a constant source of commentary, specifically in North Carolina. *See* Anita Brown-Graham, *Local Governments and the Public Duty Doctrine after* Wood v. Guilford County, 81 N.C. L. REV. 2291, 2293 (2003) (noting problems with the inconsistent application of the doctrine); G. Braxton Price, Comment, *"Inevitable Inequities:" The Public Duty Doctrine and Sovereign Immunity in North Carolina*, 28 CAMPBELL L. REV. 271, 271–73 (2006) (critiquing the inconsistent application of the public duty doctrine and arguing for its abrogation); Frank Swindell, Note, *Municipal Liability for Negligent Inspections in* Sinning v. Clark*—A "Hollow" Victory for the Public Duty Doctrine*, 18 CAMPBELL L. REV. 241, 241–43 (1996) (criticizing the public duty doctrine as applied to building inspections).

6. *See Stone*, 347 N.C. at 482, 495 S.E.2d at 716 ("Because the governmental entity owes no particular duty to any individual claimant, it cannot be held liable for negligence for a failure to carry out its statutory duties." (citing Braswell v. Braswell, 330 N.C. 363, 370, 410 S.E.2d 897, 901 (1991))).

7. *See* Brown-Graham, *supra* note 5, at 2292–93 (using an attack against Shelley Wood that took place in Guilford County Courthouse to frame her criticisms); Price, *supra* note 5, at 271–72 (using an automobile crash that took the lives of two children and a fire at a food processing plant that took the lives of twenty-five employees to base his critiques); Swindell, *supra* note 5, at 241–42 (describing one couple's experience with a housing inspector to criticize the doctrine).

8. *See, e.g.*, Jesse M. Fried & Mira Ganor, *Agency Costs of Venture Capitalist Control in Startups*, 81 N.Y.U. L. REV. 967, 1018 (2006) (commenting that regulations can increase tax burdens for startup companies); Molly Zohn, *Filling the Void: International Legal Structures and Political Risk in Investment*, 31 FORDHAM INT'L L.J. 230, 233 (2007) (commenting that regulations can increase tax burdens in relation to investments).

9. One can get a sense of the added safety these regulations and agencies provide by examining the scope of inspections the agencies conduct. The NCDENR was monitoring 2,763 large wastewater systems as of January 1, 2010. N.C. Dep't of Env't & Natural Res., On-Site Water Protection Section: Large Wastewater Systems, http://www.deh.enr.state.nc.us/osww_new/new1/largewwsys.htm (last visited Jan. 2, 2010) (clicking on "System

The public duty doctrine and the corresponding protection from liability it affords government actors play an important role in allowing North Carolina governmental entities to create regulations for the public's benefit. Because the doctrine shields a government entity from liability when it acts for the benefit of the public rather than for the benefit of an individual, the General Assembly can freely adopt regulations without the fear of tort liability for failing to enforce the regulations or for enforcing them negligently.[10] This protection encourages government entities to adopt safety regulations, and according to the Supreme Court of North Carolina, " '[i]t is better to have such laws, even haphazardly enforced, than not to have them at all.' "[11]

The recent North Carolina Court of Appeals decision in *Murray v. County of Person*[12] threatens the effectiveness of the public duty doctrine and thereby discourages the State from enacting safety regulations. The dispute in *Murray* involved the installation of an "innovative wastewater treatment system" on the plaintiff's property.[13] One defendant was an Environmental Health Specialist for the Person County Health Department ("PCHD") who issued an installation permit in 2002 and repair permits after the system failed in 2004.[14] The plaintiff sued the Environmental Health Specialist and two other members of the PCHD, who also inspected Murray's wastewater treatment system, in their individual and official capacities for negligently issuing the permits.[15] No party appealed the trial court's dismissal of the official capacity claims, so the court of appeals heard only the individual capacity claims.[16]

Information" under the heading "Large Systems Database" will link to a spreadsheet that provides information on large wastewater systems). The North Carolina Department of Labor documented thousands of violations of safety regulations. Div. of Occupational Safety & Health, N.C. Dep't of Labor, Top 25 Most Frequently Cited "Serious" Construction Standards, http://www.nclabor.com/dol_statistics/stats.htm (last visited Jan. 2, 2010).

10. The need to prevent the State from exposing itself to the risk of crippling liability has been used to justify the doctrine. *See Stone*, 347 N.C. at 481, 495 S.E.2d at 716 (citing Grogan v. Commonwealth, 577 S.W.2d 4, 6 (Ky. 1979)); Braswell v. Braswell, 330 N.C. 363, 370–71, 410 S.E.2d. 897, 901 (1991).

11. *Stone*, 347 N.C. at 481, 495 S.E.2d. at 716 (quoting Grogan v. Commonwealth, 577 S.W.2d 4, 6 (Ky. 1979)).

12. 191 N.C. App. 575, 664 S.E.2d 58 (2008), *discretionary review denied*, 363 N.C. 129, 673 S.E.2d 360 (2009).

13. *Id.* at 576, 664 S.E.2d at 59.

14. *Id.*

15. *Id.* at 576–77, 664 S.E.2d at 59.

16. *Id.* at 577, 664 S.E.2d at 59–60.

The defendants in *Murray* attempted to use the public duty doctrine as a defense.[17] Previously, the North Carolina Court of Appeals held that health departments may receive the protection of the public duty doctrine.[18] In applying the doctrine in *Murray*, however, the North Carolina Court of Appeals distinguished between official capacity claims and individual capacity claims and held that the doctrine applied only to the former.[19] The court's holding led to the contradictory result that the defendant simultaneously owed the plaintiff a duty of care while acting in an individual capacity, but did not owe the plaintiff a duty while acting in an official capacity.

Applying the public duty doctrine only to official capacity claims is inconsistent with North Carolina precedent and ignores the purpose of the doctrine by shifting liability to individuals who have fewer resources than the State. Consequently, the holding in *Murray* might discourage individuals from being state employees if courts can hold these individuals liable while enforcing statutory regulations. Without the protection of a consistently applied public duty doctrine, the State may be less likely and less able to adopt additional regulations. As a result, the public will not benefit from having many safety risks minimized through state regulation.

Since the public duty doctrine benefits the public by encouraging the General Assembly to pass regulations that make North Carolina safer, the Supreme Court of North Carolina should overrule *Murray* to clarify that the doctrine is applied based on the nature of the duty owed regardless of whether the plaintiff files individual or official capacity claims. By focusing on the duty owed, future courts can apply the public duty doctrine uniformly to governmental entities and their employees.

This Recent Development will begin by providing an overview of the public duty doctrine in North Carolina. Next, it will discuss problems with how the North Carolina Court of Appeals interpreted the law surrounding the doctrine in *Murray*. Namely, the court of appeals took an unwarranted departure from precedent by applying the public duty doctrine differently to individual and official capacity claims rather than applying the doctrine uniformly based on the duty

17. *Id.*

18. Watts v. N.C. Dept. of Env't & Natural Res., 182 N.C. App. 178, 182, 641 S.E.2d 811, 816 (2007), *aff'd in part as modified per curiam by* 362 N.C. 497, 666 S.E.2d 752 (2008).

19. *Murray*, 191 N.C. App. at 579, 664 S.E.2d at 61 ("We hold that the public duty doctrine does not extend to government workers sued only in their individual capacities.").

owed by the defendants. Ultimately, this Recent Development will argue that the court of appeals incorrectly decided *Murray* based on the policies and case law supporting the public duty doctrine.

I. THE PUBLIC DUTY DOCTRINE IN NORTH CAROLINA

The public duty doctrine is a common law rule that limits the State's liability for negligence.[20] According to the doctrine, "when a governmental entity owes a duty to the general public, particularly a statutory duty, individual plaintiffs may not enforce the duty in tort."[21] The rule is founded on the premise that the State should not have to expose itself to limitless tort liability when it decides how to allocate limited resources for the public good.[22]

The public duty doctrine protects the State from tort liability by restricting the scope of the State's duty to others.[23] To successfully plead an action based on the tort of negligence, a plaintiff must show that the defendant owed the plaintiff a legal duty, that the defendant breached that duty, and that the breach was the proximate cause of the plaintiff's injuries.[24] The public duty doctrine precludes an individual from suing a state employee for negligence in situations where the employee owed a duty to the public rather than to the individual.[25] Because the state employee does not owe the individual plaintiff a legal duty, the individual plaintiff cannot prove all the elements of negligence and thus cannot successfully plead a case of negligence.

Furthermore, the public duty doctrine precludes the State's liability in tort independently from any waiver of sovereign immunity.

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20. Myers v. McGrady, 360 N.C. 460, 465, 628 S.E.2d 761, 766 (2006) ("The public duty doctrine is a separate rule of common law negligence that may limit tort liability, even when the State has waived sovereign immunity.").

21. *Id.* at 465–66, 628 S.E.2d at 766 (citing Hunt *ex rel.* Hasty v. N.C. Dep't of Labor, 348 N.C. 192, 499 S.E.2d 747 (1998); Stone v. N.C. Dep't of Labor, 347 N.C. 473, 495 S.E.2d 711, (1998); Braswell v. Braswell, 330 N.C. 363, 410 S.E.2d 897 (1991)). The public duty doctrine has been pejoratively described as " 'a duty to all, a duty to none.' " *See, e.g.*, Swindell, *supra* note 5, at 248 (citing Adams v. State, 555 P.2d 235, 241 (Alaska 1976); Leake v. Cain, 720 P.2d 152, 159 (Colo. 1986); Commercial Carrier Corp. v. Indian River County, 371 So. 2d 1010, 1015 (Fla. 1979)).

22. *Myers*, 360 N.C. at 466, 628 S.E.2d at 766.

23. *See id.* at 465, 628 S.E.2d at 765–66 ("[W]e hold that each negligence claim . . . arises from the agency's performance of a statutorily defined public duty, which claim is unenforceable by plaintiff or third-party plaintiffs individually . . . .").

24. *See* Martishius v. Carolco Studios, Inc., 355 N.C. 465, 473, 562 S.E.2d 887, 892 (2002).

25. *Myers*, 360 N.C. at 465–66, 628 S.E.2d at 766.

The Tort Claims Act[26] waives some of the State's sovereign immunity. The Act imposes liability "under circumstances where the State . . . , if a private person, would be liable to the claimant in accordance with the laws of North Carolina."[27] Some plaintiffs believed that the doctrine did not apply to claims brought under the Tort Claims Act; however, such arguments have not succeeded.[28] The Tort Claims Act does not prevent the State from asserting the public duty doctrine because that doctrine only protects the State from tort liability when the State performs a public duty.[29] Individuals do not have public duties.[30] Thus, without the doctrine, the State could be liable when an individual could not be.[31] That result would be inconsistent with the Tort Claims Act, which imposes liability on the State in instances where a private person would be liable.[32] Therefore, under the Tort Claims Act, the State, like an individual, can be liable only for its negligent performance of private duties.[33]

Braswell v. Braswell[34] created two exceptions to the public duty doctrine: (1) existence of a special relationship and (2) reliance on promised protection.[35] First, the State can be liable if there is a special relationship between the State and the injured party,[36] such as the relationship between a State's witness or informant and the police.[37] A special relationship may also be statutorily created for a discrete class of people.[38] For example, the Supreme Court of North Carolina

26. N.C. GEN. STAT. § 143-291 (2007).

27. *Id.*

28. *See, e.g.*, Stone v. N.C. Dep't of Labor, 347 N.C. 473, 478, 495 S.E.2d 711, 714 (1998) (holding that the Tort Claims Act allows the State to be liable only when a private person would be).

29. *See id.*

30. *See id.* ("Private persons do not possess public duties.")

31. *Id.* at 479, 495 S.E.2d at 714.

32. *Id.* at 478, 495 S.E.2d at 714 ("[U]nder the Tort Claims Act, the State is liable if a private person would be.").

33. *Id.* at 478–79, 495 S.E.2d at 714.

34. 330 N.C. 363, 410 S.E.2d 897 (1991).

35. *Id.* at 371, 410 S.E.2d at 902. Other cases offer a different conception of the exceptions. These cases conceptualize the only exception as the special duty exception, with the special relationship exception as a subset of it. *See, e.g.*, Cockerham-Ellerbee v. Town of Jonesville, 176 N.C. App 372, 377, 626 S.E.2d 685, 689 (2006) (citing Vanasek v. Duke Power Co., 132 N.C. App. 335, 338, 511 S.E.2d 41, 44 (1999)). The different conception of the exceptions is not relevant to this Recent Development and will not likely lead to different results.

36. *Braswell*, 330 N.C. at 371, 410 S.E.2d at 902.

37. *Id.*

38. *See* Multiple Claimants v. N.C. Dep't of Health & Human Servs., 361 N.C. 372, 378, 646 S.E.2d 356, 360 (2007) (finding a special relationship between the Department of

held that a special relationship existed between inmates in state prisons and the North Carolina Department of Health and Human Services ("DHHS") because a statute required that DHHS ensure the inmates' well-being.[39] By referencing "prisoners" and "inmates," the statute created a duty to a specific group of people and not to the public at large.[40]

Under the second exception to the public duty doctrine, the State can be liable when an individual relies, to his detriment, on the State's promised protection.[41] This exception arises when a police officer creates a special duty by promising to protect an individual, then fails to protect that individual, and a causal relationship exists between the individual's reliance on the officer's promise and the individual's injury.[42] Both exceptions are narrowly applied,[43] but North Carolina courts are particularly strict when applying the reliance on promised protection exception, not applying it unless "the promise, reliance, and causation are manifestly present."[44]

Despite the creation of these two exceptions, courts have continued to expand the application of the public duty doctrine. Initially, the public duty doctrine protected law enforcement officers from suits brought against them by citizens for failing to prevent a crime.[45] The doctrine now applies to state agencies that perform inspections for the public's benefit.[46] For example, courts have applied the doctrine to claims brought against the North Carolina Department of Environment and Natural Resources and its divisions

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Health and Human Services and inmates because statutes required inspections of confinement facilities to protect the health and welfare of the inmates).

39. *Id.* at 378–79, 646 S.E.2d at 360–61.

40. *See id.* at 378, 646 S.E.2d at 360.

41. *See, e.g.*, *Braswell*, 330 N.C. at 371, 410 S.E.2d at 902 (citing Coleman v. Cooper, 89 N.C. App. 188, 194, 366 S.E.2d 2, 6 (1988)).

42. *Id.*

43. Hunt *ex rel.* Hasty v. N.C. Dep't of Labor, 348 N.C. 192, 197, 499 S.E.2d 747, 750 (1998) (citing *Braswell*, 330 N.C. at 372, 410 S.E.2d at 902).

44. Watts v. N.C. Dep't of Env't & Natural Res., 182 N.C. App. 178, 183, 641 S.E.2d 811, 816 (2007) (quoting *Braswell*, 330 N.C. at 372, 410 S.E.2d at 902), *aff'd in part as modified per curiam by* 362 N.C. 497, 666 S.E.2d 752 (2008); *see also* Isenhour v. Hutto, 350 N.C. 601, 606, 517 S.E.2d 121, 125 (1999) (establishing that the promise exception to the special duty doctrine is a " 'very narrow one' " (quoting *Braswell*, 330 N.C. at 372, 410 S.E.2d at 902)).

45. *Braswell*, 330 N.C. at 370–71, 410 S.E.2d at 901–02.

46. *See Hunt*, 348 N.C. at 197, 499 S.E.2d at 750 (holding the public duty doctrine barred a claim based on a statute requiring the Department of Labor to inspect go-karts); Stone v. N.C. Dep't of Labor, 347 N.C. 473, 481, 495 S.E.2d 711, 716 (1998) (finding the purpose behind the doctrine, to protect state agencies with limited resources from the burden of overwhelming liability, applied equally well to agencies that inspect as it does to law enforcement).

for negligent inspection of soil conditions[47] and for failing to control a forest fire.[48] In contrast, at the local level, courts have limited the public duty doctrine to law enforcement departments.[49] The expansion outside of law enforcement has provided more opportunities for courts to apply the exceptions to the doctrine,[50] but courts continue to adhere to strict applications of the doctrine.[51]

When deciding whether to apply the public duty doctrine to statutory duties imposed on state agencies outside of the law enforcement context, North Carolina courts have historically looked at the nature of the duty owed and not the identity of the actor.[52] Courts have analyzed the language of the statute[53] and the practical aspects of enforcement[54] when deciding if the statute created a duty to the public or to individuals. If a court determined that a statute requires a duty to the public, then the public duty doctrine applied to bar claims based on negligent performance of the actions mandated by the statute.[55] However, if a court determined the statute created a duty only to a discrete class of individuals, rather than the public at

47. *Watts*, 182 N.C. App. at 182, 641 S.E.2d at 816.

48. Myers v. McGrady, 360 N.C. 460, 462–63, 628 S.E.2d 761, 763–64 (2006).

49. *See* Lovelace v. City of Shelby, 351 N.C. 458, 461, 526 S.E.2d 652, 654 (2000) (refusing to expand the public duty doctrine at the local level outside of law enforcement contexts); *see also* Ryan Rich, Recent Development, *Seeing Through the Smoke and Fog: Applying a Consistent Public Duty Doctrine in North Carolina after* Myers v. McGrady, 85 N.C. L. REV. 706, 712–24 (2007) (describing the incongruous treatment of state and local governments under the public duty doctrine by North Carolina courts). While the inconsistent application of the public duty doctrine is problematic, such a discussion is outside the scope of this piece.

50. *See, e.g.*, Multiple Claimants v. N.C. Dep't of Health & Human Servs., 361 N.C. 372, 378, 646 S.E.2d 356, 360 (2007) (finding a special relationship between the Department of Health and Human Services and inmates); *Watts*, 182 N.C. App. at 184, 641 S.E.2d at 817 (finding a special relationship between the NCDENR and the plaintiff).

51. *See, e.g.*, *Hunt*, 348 N.C. at 198–99, 499 S.E.2d at 751 (refusing to apply either exception to inspections of amusement park rides).

52. By looking at the nature of the duty, North Carolina courts have developed a "functional," compared to an "identity," perspective. This has allowed the public duty doctrine to apply more broadly at the state level. *See, e.g.*, Rich, *supra* note 49, at 715–17 (describing the functional approach to the public duty doctrine in *Myers*). Courts have not applied the functional approach to local government because the public duty doctrine is limited to law enforcement at the local level. *See supra* notes 49–50 and accompanying text.

53. *See Multiple Claimants*, 361 N.C. at 377–78, 646 S.E.2d at 359–60; *Myers*, 360 N.C. at 467–68, 628 S.E.2d at 767; *Hunt*, 348 N.C. at 197, 499 S.E.2d at 750; Stone v. N.C. Dep't of Labor, 347 N.C. 473, 482, 495 S.E.2d 711, 716 (1998).

54. *See* Isenhour v. Hutto, 350 N.C. 601, 608, 517 S.E.2d 121, 126 (1999); Christmas v. Cabarrus County, 192 N.C. App. 227, 233–34, 664 S.E.2d 649, 653–54 (2008).

55. *See supra* notes 20–25 and accompanying text.

large, the public duty doctrine did not apply, and the individual was able to sue the State for negligently performing its statutory duty.[56]

The Supreme Court of North Carolina established this framework for analyzing public duty doctrine claims in *Stone v. North Carolina Department of Labor*.[57] In *Stone*, the court relied on statutory language requiring inspections " 'as often as practicable' " to find the statute created a duty to the public and not to individuals.[58] The court also found it persuasive that the statute did not authorize a private right of action to ensure compliance with the statute.[59] The court's use of this framework in later decisions demonstrates its approval.[60]

Despite its expansion outside of the law enforcement arena and its bar on claims brought under the Tort Claims Act, the public duty doctrine is not an impenetrable shield that precludes the government from liability for negligence. Courts are less likely to apply the public duty doctrine when statutes require the protection of a discrete class of people from limited dangers and in limited areas.[61] The exceptions also provide an avenue for individuals to hold the State liable.[62] Furthermore, no North Carolina court has used the public duty doctrine to shield a defendant from actions *directly* causing death or injury. The public duty doctrine has shielded defendants only where their actions *proximately* or *indirectly* caused injury or death.[63] Thus,

56. *See Multiple Claimants*, 361 N.C. at 377–78, 646 S.E.2d at 359–60 (finding a statute requiring the inspection of prisons created a special relationship between the State and the inmates).

57. 347 N.C. 473, 495 S.E.2d 711 (1998).

58. *Id.* at 482, 495 S.E.2d at 716 (quoting N.C. GEN. STAT. § 95-4(5) (1996)).

59. *Id.*

60. *See* Hunt *ex rel.* Hasty v. N.C. Dep't of Labor, 348 N.C. 192, 197, 499 S.E.2d 747, 750 (1998) (finding that the language of a statute requiring inspections of amusement park rides did not create a duty to individuals).

61. *See* Isenhour v. Hutto, 350 N.C. 601, 608, 517 S.E.2d 121, 126 (1999) (declining to apply the public duty doctrine because school crossing guards owe a duty to protect "certain children, at certain times, in certain places," not the general public); Christmas v. Cabarrus County, 192 N.C. App. 227, 233–34, 664 S.E.2d 649, 653–54 (2008) (refusing to apply the public duty doctrine because the county had to inspect homes of children only after reports of neglect, which created a limited class).

62. *See* Multiple Claimants v. N.C. Dep't of Health & Human Servs., 361 N.C. 372, 377–78, 646 S.E.2d 356, 359–60 (2007) (relying on the limited class of inmates and the inmates' confinement to find a special relationship existed); Davis v. Messer, 119 N.C. App. 44, 60, 457 S.E.2d 902, 912 (1995) (finding a special duty existed between the fire department and an individual who called 911 seeking the fire department's assistance).

63. *See* Moses v. Young, 149 N.C. App. 613, 616–17, 561 S.E.2d 332, 334–35 (2002) (citing an extensive list of North Carolina cases that have only applied the doctrine when defendants' actions caused the injury).

critics' fears that the public duty doctrine will shield the State from *all* liability for its actions[64] are unfounded.

II. THE PUBLIC DUTY DOCTRINE IN *MURRAY V. COUNTY OF PERSON*

The dispute in *Murray v. County of Person*[65] arose because the plaintiff, Joy Murray, needed an improvement permit from the PCHD in order to install a wastewater treatment system on her property.[66] In November 2002, defendant Adam Sarver, an Environmental Health Specialist for the PCHD, inspected Murray's property and issued a permit approving installation of the wastewater treatment system.[67] Shortly after Murray moved into her home in March 2003, "[she] noticed water surfacing on her property."[68] After learning that the water was related to a problem with her wastewater treatment system, Murray contacted Sarver, who then conducted a series of inspections.[69] Sarver, along with two other members of the PCHD, approved the installation of a new line and a new wastewater treatment system to solve Murray's problem.[70] After this new system failed in early 2004, Murray sued the PCHD and Sarver and two other members of the PCHD in their individual and official capacities.[71] "She alleged negligence . . . in the issuance of permits for the installation and repair of her wastewater treatment system."[72]

On the facts, the case appeared to be a perfect candidate for the public duty doctrine. The public duty doctrine protects the Health Department and its employees when they are conducting statutorily mandated inspections of sites before the installation of a wastewater

64. *See Stone*, 347 N.C. at 484, 495 S.E.2d at 717 (Orr, J., dissenting) (allowing the public duty doctrine to bar claims filed under the Tort Claims Act "nullifie[s]" individuals' ability to sue the State); Swindell, *supra* note 5, at 279 (stating that municipalities will hide behind the governmental immunity provided by the public duty doctrine after negligently inspecting homes).

65. 191 N.C. App. 575, 664 S.E.2d 58 (2008), *discretionary review denied*, 363 N.C. 129, 673 S.E.2d 360 (2009).

66. *Id.* at 576, 664 S.E.2d at 59.

67. *Id.* Sarver was present at Murray's house to fulfill a statutory duty. *See id.* at 578, 664 S.E.2d at 60. Environmental Health Specialists, who conduct inspections to determine whether a lot is suitable for a wastewater treatment system, may use the public duty doctrine. *See id.*

68. *Id.* at 576, 664 S.E.2d at 59.

69. *Id.*

70. *Id.*

71. *Id.* at 576–77, 664 S.E.2d at 59.

72. *Id.* at 577, 664 S.E.2d at 59.

treatment system.[73] Sarver and the two other members of the PCHD (the "defendants") went to Murray's house for the purpose of conducting an inspection to determine whether the site was suitable for a wastewater treatment system as required by statute.[74] Thus, the defendants should have been able to use the public duty doctrine as a defense.

The *Murray* court, however, did not follow public duty doctrine precedent and instead applied the doctrine based on the nature of the claims against the defendants.[75] Murray filed both individual and official capacity claims against the defendants.[76] The court found that the public duty doctrine barred the official capacity claims,[77] but the court refused to apply the doctrine to the individual claims because no case has held that "an employee of a health department is entitled to the protection of the public duty doctrine when sued *only* in his or her individual capacity . . . ."[78] The court rejected the defendants' arguments that they could rely on public officers' immunity[79] and found the defendants individually liable.[80]

The result in *Murray* is confusing: the defendants did not owe Murray a duty in their official capacities, but the defendants did owe Murray a duty simultaneously in their individual capacities, which is inconsistent with negligence principles. The *Murray* court ignored public duty doctrine precedent because no other case has applied the doctrine based on the nature of the claims filed.

The fact that a plaintiff filed individual and official capacity claims has not previously been relevant to the application of the

73. *Id.* at 578, 664 S.E.2d at 60 (citing Watts v. N.C. Dep't of Env't & Natural Res., 182 N.C. App. 178, 182, 641 S.E.2d 811, 816 (2007), *aff'd in part as modified per curiam by* 362 N.C. 497, 666 S.E.2d 752 (2008)).

74. *See id.* at 576, 664 S.E.2d at 59.

75. *See id.* at 578–79, 664 S.E.2d at 61. Murray sued Person County and the PCHD; Sarver; Harold Kelly, another Environmental Health Specialist; and Janet Clayton, an Environmental Health Supervisor. *Id.* at 576–77, 664 S.E.2d at 59. The trial court granted summary judgment in favor of Person County and PCHD. *Id.* at 577, 664 S.E.2d at 59. The trial court further granted summary judgment in favor of Sarver, Kelly, and Clayton (the "defendants") in relation to official capacity claims made by the plaintiff. *Id.* The defendants appealed this partial summary judgment, claiming that both the public duty doctrine and public officers' immunity would shield them from liability for individual capacity claims too. *Id.* at 577, 664 S.E.2d at 60.

76. *See id.* at 576–77, 664 S.E.2d at 59.

77. *Id.* at 578, 664 S.E.2d at 60–61.

78. *Id.* at 578, 664 S.E.2d at 61.

79. *Id.* at 579, 664 S.E.2d at 61.

80. *Id.* at 581, 664 S.E.2d at 62.

public duty doctrine.[81] When the Supreme Court of North Carolina adopted the public duty doctrine, the court did not differentiate between individual or official capacity claims.[82] A distinction between individual and official capacity claims was not discussed in *Braswell*—the plaintiff simply sued Ralph L. Tyson, Sheriff of Pitt County.[83] Yet, it is unlikely the Supreme Court of North Carolina would have ignored the distinction if it had been relevant to the case. Previous cases looked to the nature of the duty owed, not the actor involved or claims filed, when determining whether the public duty doctrine applied to state entities.[84] In those rare cases where plaintiffs filed both individual and official capacity claims, the nature of the claims was not part of the courts' public duty doctrine analysis.[85] Each of these cases had extraneous facts that rendered the public duty doctrine inapplicable to bar the claims. These extraneous facts, and not the fact that the plaintiff filed individual capacity claims, persuaded each court not to apply the public duty doctrine in the following cases.

The plaintiffs in *Lynn v. Overlook Development*[86] sued a building inspector for the City of Asheville in both his individual and official capacities for negligently issuing a permit, which stated that plaintiffs' home complied with housing regulations.[87] The court dismissed the official capacity claims under the public duty doctrine.[88] The individual claims were not dismissed,[89] however, because they were based on actions outside the scope of defendant's employment.[90] The public duty doctrine does not preclude claims based on individual

81. *See, e.g.*, Wood v. Guilford County, 355 N.C. 161, 163, 558 S.E.2d 490, 492–93 (2002); Lovelace v. City of Shelby, 351 N.C. 458, 459, 526 S.E.2d 652, 653 (2000); Hunt v. N.C. Dep't of Labor, 348 N.C. 192, 194, 499 S.E.2d 747, 748 (1998); Stone v. N.C. Dep't of Labor, 347 N.C. 473, 476, 495 S.E.2d 711, 713 (1998); Sinning v. Clark, 119 N.C. App. 515, 517–18, 459 S.E.2d 71, 73 (1995), *overruled on other grounds by* Thompson v. Waters, 351 N.C. 462, 465, 526 S.E.2d 650, 652 (2000).

82. *See* Braswell v. Braswell, 330 N.C. 363, 371–72, 410 S.E.2d 897, 901–02 (1991).

83. *See id.* at 366, 410 S.E.2d at 899.

84. *See supra* notes 52–60 and accompanying text.

85. *See infra* notes 86–104 and accompanying text.

86. 328 N.C. 689, 403 S.E.2d 469 (1991).

87. *Id.* at 691, 403 S.E.2d at 470.

88. Lynn v. Overlook Dev., 98 N.C. App. 75, 78, 389 S.E.2d 609, 612 (1990), *aff'd in part and rev'd in part*, 328 N.C. 689, 403 S.E.2d 469 (1991).

89. *Id.* at 80, 389 S.E.2d at 613.

90. *Lynn*, 328 N.C. at 692, 403 S.E.2d at 470. The individual capacity claims were based on "willful, wanton, unlawful, culpable, and/or reckless conduct outside the scope of [defendant's] duties as a city employee." *Id.* These claims were ultimately dismissed because the plaintiffs failed to prove defendant's conduct was the proximate cause of their injuries. *See id.* at 697, 403 S.E.2d at 473–74.

willful or reckless conduct; everyone as an individual owes others a duty to refrain from acting unlawfully or recklessly.[91] The *Lynn* decision, therefore, merely reinforces the fact that the public duty doctrine bars claims when a duty is owed to the public but not when a duty is owed to an individual.[92]

Other cases rely on the fact that the relationship between a plaintiff and government employee renders the doctrine inapplicable and not the fact that a plaintiff brought individual and official capacity claims when holding a government employee personally liable. In *Isenhour v. Hutto*,[93] the nature of the relationship between an adult school crossing guard and the children she guarded convinced the court that the public duty doctrine was inappropriate.[94] The court found that the public duty doctrine did not apply to crossing guards because, unlike police officers who must protect the general public from unknown dangers, the "relationship between a crossing guard and a child is direct and personal, and the dangers are immediate and foreseeable."[95] After finding that Robbie Faye Morrison, the crossing guard and a defendant in the case,[96] had a duty to protect the individual children, the court analyzed whether Morrison could be held individually liable.[97] The discussion of individual liability was appropriate only after the court found the public duty doctrine inapplicable because Morrison owed an individual child an individual duty, and thus, the doctrine did not shield Morrison from liability.[98] Basic negligence law requires there to be a duty before an individual can be held liable.[99] *Isenhour* demonstrates that a court must first analyze whether the public duty doctrine is applicable. If the court finds that the public duty doctrine does not apply and the defendant owed the plaintiff a duty, then the court can determine whether the defendant is individually liable.

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91. *See* JOHN L. DIAMOND, LAWRENCE C. LEVINE & M. STUART MADDEN, UNDERSTANDING TORTS 112 (1996) ("The duty concept has been expanding to the point that now one engaged in risk-creating conduct generally owes a duty to avoid causing foreseeable personal injuries to foreseeable plaintiffs.").

92. *See Lynn*, 328 N.C. at 697, 403 S.E.2d at 473–74.

93. 350 N.C. 601, 517 S.E.2d 121 (1999).

94. *Id.* at 608, 517 S.E.2d at 126.

95. *Id.*

96. *Id.* at 602, 517 S.E.2d at 123.

97. *Id.* at 608–09, 517 S.E.2d at 126–27.

98. *Id.* at 608, 517 S.E.2d at 126.

99. *E.g.*, Stone v. N.C. Dep't of Labor, 347 N.C. 473, 482, 495 S.E.2d 711, 716 (1998) ("Absent a duty, there can be no liability." (citing Kientz v. Carlton, 245 N.C. 236, 240, 96 S.E.2d 14, 17 (1957))).

Lastly, in *Davis v. Messer*,[100] the fact that the Chief of the Waynesville Fire Department, Messer, was sued in his individual and official capacities was not relevant to whether the public duty doctrine barred claims filed for negligently responding to a 911 call.[101] The court held that the special duty exception existed, and thus, the public duty doctrine did not apply.[102] Because the exception existed, the defendant fire chief owed the plaintiff a duty as an individual.[103] Consequently, Messer could be sued in an individual capacity. Again, the factual circumstances allowed the individual capacity claims. Messer owed Davis a duty as an individual because the special duty exception applied.[104] Thus, Messer could be sued in his individual capacity. Once again, it is the facts that allowed the individual capacity claims, not that the plaintiff filed individual capacity claims.

Murray differs from the cases discussed above in which courts held state employees liable as individuals. All of these cases demonstrate that the nature of the claims filed is irrelevant to the public duty doctrine analysis. As these cases show, there must be an alternative basis to justify holding the plaintiff liable as an individual. Reckless conduct outside the scope of the public duty the employee performed,[105] reasons making the public duty inapplicable,[106] or an exception to the public duty doctrine[107] are all alternative bases barring a court from applying the public duty doctrine. As these cases demonstrate, there must be facts that justify the inapplicability of the public duty doctrine. These cases do not support the result in *Murray* because *Murray* had no extraneous facts that rendered the public duty doctrine inapplicable. The plaintiff did not allege Sarver committed reckless action outside the scope of his employment that would implicate an individual duty owed by Sarver.[108] Unlike *Isenhour*, where the public duty doctrine did not apply at all, the

100. 119 N.C. App. 44, 457 S.E.2d 902 (1995).

101. *See id.* at 48, 51–52, 60, 457 S.E.2d at 905, 907, 912.

102. *See id.* at 60, 457 S.E.2d at 912.

103. *Id.*

104. *Id.*

105. *See* Lynn v. Overlook Dev., 328 N.C. 689, 691–92, 403 S.E.2d 469, 470 (1991).

106. Isenhour v. Hutto, 350 N.C. 601, 608, 517 S.E.2d 121, 126 (1999) (finding the public duty doctrine inapplicable because school crossing guards do not owe a general duty to protect the public, but rather a specific duty relating to specific individuals at specific times).

107. *See Davis*, 119 N.C. App. at 60, 457 S.E.2d at 912 (finding the special relationship exception applied).

108. *See Lynn*, 328 N.C. at 691–92, 403 S.E.2d at 470 (reporting that all claims against the defendants were dismissed except those alleging "willful, wanton, unlawful, culpable, and/or reckless conduct" that was beyond the scope of the defendants' duties).

Murray court held that the public duty doctrine applied to the relationship between an environmental specialist and a homeowner.[109] Unlike *Davis*, the *Murray* court did not find a basis for applying the special duty exception.[110] The *Murray* court erred in allowing the defendant to be individually liable for performing statutory duties owed to the public simply because the plaintiff filed individual capacity claims. Therefore, *Murray*, without extraneous facts, is distinguishable from relevant, prior case law and sharply deviates from North Carolina precedent.

Due to its improper focus on the nature of the claims, the *Murray* court believed the defendants had to rely on public officers' immunity rather than the public duty doctrine because the plaintiffs sued them in their individual capacities.[111] The court relied on several cases, including *Isenhour*, to support its proposition that North Carolina courts generally apply public officers' immunity rather than the public duty doctrine when government employees are sued in their individual capacity.[112]

The court, however, misinterpreted *Isenhour* as well as the other cases. In *Isenhour*, the court followed the analysis outlined in *Stone*[113]—the *Isenhour* court analyzed what performance the duty entailed and then found the public duty doctrine inapplicable because the defendant owed a duty to individuals rather than to the public.[114] The *Isenhour* court did not analyze whether public officers' immunity applied until after it determined that the public duty doctrine was inapplicable.[115] Had the *Isenhour* court found that the defendant owed a duty to the public, then it would have been unnecessary to

109. Murray v. County of Person, 191 N.C. App. 575, 578, 664 S.E.2d 58, 60 (2008), *discretionary review denied*, 363 N.C. 129, 673 S.E.2d 360 (2009).

110. *See id.* at 578–79, 664 S.E.2d at 60–61.

111. *Id.* at 579, 664 S.E.2d at 61 ("Where a governmental worker is sued in his individual capacity, rather than applying the public duty doctrine, our courts have consistently applied public officers' immunity." (citing Isenhour v. Hutto, 350 N.C. 601, 609, 517 S.E.2d 121, 127 (1999); Epps v. Duke Univ., Inc., 122 N.C. App. 198, 205, 468 S.E.2d 846, 851–52 (1996); EEE-ZZZ Lay Drain Co. v. N.C. Dep't of Human Res., 108 N.C. App. 24, 28, 422 S.E.2d 338, 341 (1992), *overruled on other grounds by* Meyer v. Walls, 347 N.C. 97, 107, 489 S.E.2d 880, 886 (1997))).

112. *Id.* (citing Isenhour v. Hutto, 350 N.C. 601, 609, 517 S.E.2d 121, 127 (1999); Epps v. Duke Univ., Inc., 122 N.C. App. 198, 205, 468 S.E.2d 846, 851–52 (1996); EEE-ZZZ Lay Drain Co. v. N.C. Dep't of Human Res., 108 N.C. App. 24, 28, 422 S.E.2d 338, 341 (1992), *overruled on other grounds by* Meyer v. Walls, 347 N.C. 97, 107, 489 S.E.2d 880, 886 (1997)).

113. Isenhour v. Hutto, 350 N.C. 601, 607–08, 517 S.E.2d 121, 126 (1999). For a discussion of the *Stone* framework, see *supra* notes 52–60 and accompanying text.

114. *Isenhour* at 608, 517 S.E.2d at 126.

115. *Id.* at 609–612, 517 S.E.2d at 127–28.

conduct a public officers' immunity analysis because the public duty doctrine would have barred the claims. Thus, *Isenhour* shows that a court must first find that a defendant owes a plaintiff an individual duty before conducting a public officers' immunity analysis. The other cases relied on by the *Murray* court did not involve the public duty doctrine and are consequently irrelevant.[116] The most these cases prove is that the *Murray* court skipped an analytical step by conducting a public officers' immunity analysis without finding that defendants owed Murray an individual duty.

By ignoring the *Stone* framework, the *Murray* court reached a conclusion that is inconsistent with tort law. The *Stone* framework is consistent with tort law because it imposes liability on the State only when the State owes a duty to individuals.[117] It is a basic tort principle that without a duty, there can be no liability for negligence.[118] Sarver was present on Murray's property solely to perform a duty he owed to the public.[119] A person acting as a private individual does not have public duties.[120] Thus, Sarver, as an individual, cannot owe a duty to Murray if he was performing a public duty.[121] The court effectively held Sarver liable as an individual for a duty he did not possess, which disregards precedent and frustrates public policy.[122]

III. BROADER POLICY THREATENED BY THE *MURRAY* DECISION

The *Murray* decision threatens the policy behind the public duty doctrine. The public duty doctrine was created to protect the State's

116. *See Murray*, 191 N.C. App. at 579, 664 S.E.2d at 61; *see also* Epps v. Duke Univ., Inc., 122 N.C. App. 198, 200–05, 468 S.E.2d 846, 849–52 (1996) (evaluating a claim under public officers' immunity but failing to consider the public duty doctrine as a possible defense); EEE-ZZZ Lay Drain Co. v. N.C. Dep't of Human Res., 108 N.C. App. 24, 28–30, 422 S.E.2d 338, 341–42 (1992) (focusing on public officers' immunity but failing to consider the public duty doctrine as a possible defense), *overruled on other grounds by* Meyer v. Walls, 347 N.C. 97, 107, 489 S.E.2d 880, 886 (1997).

117. *See* Rich, *supra* note 49, at 724 n.123.

118. *See* Stone v. N.C. Dep't of Labor, 347 N.C. 473, 482, 495 S.E.2d 711, 716 (1998).

119. *See Murray*, 191 N.C. App. at 576, 664 S.E.2d at 59 (reporting that Sarver was on Murray's property only to install and repair Murray's wastewater system).

120. *See Stone*, 347 N.C. at 478, 495 S.E.2d at 714.

121. Sarver, or any state employee, could be liable for negligent, reckless, or wanton conduct outside of the scope of his employment. *See* Lynn v. Overlook Dev., 328 N.C. 689, 691–92, 403 S.E.2d 469, 470 (1991) (involving claims based on the defendant employee's reckless conduct that occurred beyond the scope of the defendant's employment). Since Murray did not present evidence that Sarver committed negligent, reckless, or wanton conduct outside of the scope of his employment, it is unlikely that he could be held liable under this theory.

122. *See Stone*, 347 N.C. at 482, 495 S.E.2d at 716 (citing Kientz v. Carlton, 245 N.C. 236, 240, 96 S.E.2d 14, 17 (1957)).

limited resources.[123] The *Murray* decision, however, is inconsistent with this policy because it transfers liability from the State to individual employees, who have even less resources than the State.[124] Since the doctrine is designed to preserve limited resources, the employees should be protected before the State since they have fewer resources.

Because the reasoning in *Murray* effectively creates a third exception to the public duty doctrine for individual capacity claims, state employees will likely face limited liability frequently. Following *Murray*, plaintiffs can avoid the public duty doctrine simply by suing individuals in their individual capacities. As the *Murray* decision shows, state employees will not be able to rely on public officers' immunity to shield them from liability.[125] Thus, the individual capacity claim exception created by *Murray* would eviscerate the protections provided by the public duty doctrine.

By weakening the effectiveness of the public duty doctrine, the *Murray* decision threatens the ability of the State to allocate resources with discretion. The protection provided by the public duty doctrine provides the General Assembly with the ability to adopt regulations freely, and the public benefits from having a legislature that can freely enact new regulations for the public's well-being.[126] Since the General Assembly knows it is protected from liability, it does not have to balance the benefit of regulations against the possible costs of liability from carrying out those regulations negligently. While under *Murray* the State will still be protected from liability, the legislature will have to consider the effect employee liability will have on its ability to enforce regulations. The State will likely have difficulty finding employees to enforce the regulations and carry out statutory inspections once the employees learn they alone can be held liable for performing their public duties.[127] The State

123. Myers v. McGrady, 360 N.C. 460, 466, 628 S.E.2d 761, 766 (2006).

124. As a matter of responsible government, the author of this Recent Development does not think the State would want to send the message that individuals can be held liable for decisions the State makes, but that the State cannot. Individual employees charged with enforcing those regulations had no input in deciding to adopt the regulations. It is disingenuous for the State to use employees as an insurance policy.

125. Murray v. County of Person, 191 N.C. App. 575, 579–81, 664 S.E.2d 58, 61–62 (2008) (finding that Environmental Health Specialists are public employees and not eligible for public officers' immunity because their duties are ministerial), *discretionary review denied*, 363 N.C. 129, 673 S.E.2d 360 (2009).

126. *See* Brown-Graham, *supra* note 5, at 2325.

127. *See* NORTH CAROLINA STATE FIREMEN'S ASSOCIATION, A REPORT PRESENTING THE CONCLUSIONS AND RECOMMENDATIONS FROM THE PARTICIPANTS OF THE GATEWAY CONFERENCE 5 (2000), *available at* http://www.ncsfa.com/pdf/

cannot enact regulations if no one is willing to be the employee whose duty it is to enforce the regulations. Therefore, by weakening the protections of the public duty doctrine and by limiting the State's freedom to regulate, the decision in *Murray* harms the public.

IV. CONCLUSION

The public duty doctrine has engendered much criticism.[128] Despite its critics, a majority of states continue to use the public duty doctrine, evidencing its usefulness.[129] The criticisms ignore the public purpose of the public duty doctrine, which is to protect the public good by allowing governments to provide important services without exposing themselves to the potential for crippling civil liability based on the performance of those services.[130] Since it was designed to protect the public welfare, the doctrine should be analyzed at a public rather than individual level. The criticisms are normally based on individual "injustices" and, therefore, ignore the greater good achieved by the doctrine.

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gateway_2000.pdf (noting a need to ensure that members are covered by the public duty doctrine); Memorandum from EMS Director J.M Tezai distributed to Durham County EMS, Fire, and 9-1-1 personnel, *available at* http://www.ncaemsa.org/public_duty_doctrine.htm (worrying that its members are no longer covered by the public duty doctrine). Other industries monitor the scope of the public duty doctrine as well. *See* Howrey LLP, *North Carolina Supreme Court Allows Homeowners to Sue for Negligent Building Inspection*, CONSTRUCTION WEBLINKS, Sept. 24, 2001, http://www.constructionweblinks.com/Resources/Industry_Reports__Newsletters/Sept_24_2001/north_carolina_supreme_court.htm (monitoring developments in how the doctrine affects the construction industry).

128. *See* Stone v. N.C. Dep't of Labor, 347 N.C. 473, 486–87, 495 S.E.2d 711, 718–19 (1998) (Orr, J., dissenting); Swindell, *supra* note 5, at 250–51.

129. Only Alaska, Arizona, Colorado, Florida, Iowa, Louisiana, New Mexico, Oregon, Wisconsin, and Wyoming have abrogated or limited the public duty doctrine. *See* Adams v. State, 555 P.2d 235, 241–42 (Alaska 1976), *superseded by statute*, Act effective May 18, 1977, ch. 37, §§ 1–3, 1977 Alaska Sess. Laws (codified as amended at ALASKA STAT. § 09.65.070 (2008)), *as recognized in* Wilson v. Municipality of Anchorage, 669 P.2d 569, 571 (Alaska 1983); Ryan v. State, 656 P.2d 597, 599 (Ariz. 1982) (en banc), *superseded by statute*, Act of Apr. 25, 1984, ch. 285, § 3, 1984 Ariz. Sess. Laws 1091, 1092–93 (codified as amended at ARIZ. REV. STAT. ANN. §§ 12-820.01 to .09 (2003)), *as recognized in* Bird v. State, 821 P.2d 287, 288–89 (Ariz. Ct. App. 1991); Leake v. Cain, 720 P.2d 152, 158–60 (Colo. 1986) (en banc); Commercial Carrier Corp. v. Indian River County, 371 So. 2d 1010, 1015–16 (Fla. 1979); Wilson v. Nepstad, 282 N.W.2d 664, 673–74 (Iowa 1979); Stewart v. Schmieder, 386 So. 2d 1351, 1358 (La. 1980); Schear v. Bd. of County Comm'rs of Bernalillo, 687 P.2d 728, 731 (N.M. 1984); Brennen v. City of Eugene, 591 P.2d 719, 724 (Or. 1979) (in banc); Coffey v. City of Milwaukee, 247 N.W.2d 132, 139 (Wis. 1976); DeWald v. State, 719 P.2d 643, 653 (Wyo. 1986); *see* Swindell, *supra* note 5, at 249 n.53.

130. *See* Brown-Graham, *supra* note 5, at 2294–96 (describing the origin of the public duty doctrine).

The *Murray* court possibly felt pressured to achieve "justice" at the individual level when it held that a state health inspector could be held individually liable while carrying out a statutory duty to the public. To achieve individual justice, the *Murray* court applied the public duty doctrine in an unprecedented manner. When one considers the ramifications of this decision, one realizes that the risks this decision creates for the public may outweigh the benefits of the individual justice achieved. The *Murray* decision limits the effectiveness of the public duty doctrine. Previously, the doctrine barred all claims brought against the State and its employees for negligently performing duties owed to the public. In *Murray*, the court used the doctrine to bar claims against the Health Department and Sarver as an official. However, the doctrine did not bar individual capacity claims. The threat of employee liability hinders the State's ability to regulate. If the State is not as willing to regulate, threats to the public will increase. The decision in *Murray* placed the short-term individual benefit over the long-term public benefit. Allowing individuals to recover does not outweigh the benefit the public derives from the accidents state regulations prevent. Although the Supreme Court of North Carolina denied review of the case,[131] *Murray* remains bad precedent because it hampers the General Assembly's ability to regulate freely and protect the public at large.

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131. Murray v. County of Person, 363 N.C. 129, 129, 673 S.E.2d 360, 360 (2009).

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